



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 26 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Victor A. Staffierri
Chairman, President and CEO
E.ON U.S.
220 West Main Street
P.O. Box 32010
Louisville, KY 40232

SUBJ: Notice of Violation

Dear Mr. Staffierri:

Enclosed is a Notice of Violation (NOV) issued to E.ON U.S. under Section 113(a)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(1). In the NOV, the United States Environmental Protection Agency notifies E.ON U.S. of violations of pre-construction and operating permitting requirements of the CAA at the E.W. Brown Plant in E.ON U.S.'s Kentucky Utilities subsidiary.

Please note the opportunity to confer outlined in the NOV. As indicated in the NOV, any request to confer should be directed to Jennifer Lewis. Ms. Lewis can be reached at (404) 562-9518.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Farmer".

G. Alan Farmer
Acting Director
Air, Pesticides and Toxics
Management Division

Enclosure

cc: Susan Green, KY Division of Enforcement

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

E.ON U.S.

Notice of Violation

Proceedings Pursuant to
Section 113 and 167 of the
Clean Air Act, 42 U.S.C.
§7413 and §7477

NOTICE OF VIOLATION

This Notice of Violation (NOV) is issued to E.ON U.S. for violations of the Clean Air Act (the Act) for Unit 3 at the E. W. Brown coal-fired power plant, which is part of E.ON U.S.'s Kentucky Utilities (KU) subsidiary. The E.W. Brown plant is located in Mercer County, Kentucky. KU is a wholly-owned subsidiary of E.ON U.S. E.ON U.S.'s headquarters and principal place of business is located in Louisville, KY. Specifically, E.ON U.S. is in violation of Prevention of Significant Deterioration (PSD) requirements of the Act, New Source Performance Standards (NSPS) requirements of the Act, Title V requirements of the Act, and Kentucky State Implementation Plan (SIP) requirements. This NOV is issued pursuant to Section 113 of the Act, as amended, 42 U.S.C.A. Section 7401-7671q. The authority to issue this NOV has been delegated to the Regional Administrator of the United States Environment Protection Agency ("U.S. EPA," "EPA," "the Agency") Region 4 and further re-delegated to the Director, Air, Pesticides and Toxics Management Division, U.S. EPA, Region 4.

FACTUAL AND REGULATORY BACKGROUND

1. Unit 3 at the E. W. Brown plant began commercial service in 1971. As originally configured, the unit was rated to produce 400 megawatts (MW). In 1997, KU made major capital expenditures for Unit 3 at the E. W. Brown plant in order to increase electrical production from the unit to 446 MW. The significant work performed during this effort includes, but is not limited to, the following:

- Redesign and replacement of the low pressure turbine
- Redesign and replacement of the intermediate and high pressure turbine blades
- Rotor rewind to accommodate an increase in electrical generation capacity
- Replacement of the hydrogen cooling system for the generator with a system of greater cooling capacity
- Installation of a redesigned reheater for the boiler with significantly greater surface area

- Installation of newly designed and upgraded pulverizers, which deliver coal to the boiler
 - Installation of new higher capacity steam release safety valves on the boiler to replace the existing safety valves
- 2. The E. W. Brown Plant is located in an area that has at all relevant times been classified as attainment or unclassifiable for NO₂, SO₂, and PM. Accordingly, the PSD provisions of Part C, Title I of the Act apply to operations at the E. W. Brown plant.
- 3. Pursuant to Part C of the Act, the SIP of Kentucky requires that no construction or operation of a major modification of a major stationary source occur in an area designated as attainment without first obtaining a permit. Kentucky Administrative Regulation (KAR) 401 KAR 51:017 applies for sources located in attainment areas. This regulation was originally approved as part of the Kentucky SIP on September 1, 1989, at 54 Fed. Reg. 36307, and was since amended. The PSD provisions require preconstruction review and permitting for major modifications of stationary sources. Pursuant to the applicable regulations, if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit. To obtain this permit, the source must agree to put on the best available control technology (BACT) or in the case of a modification that is not major, must meet the emission limit called for under the applicable minor New Source Review (NSR) program in the SIP.
- 4. The Kentucky SIP provisions identified in paragraph 3 above are all federally enforceable pursuant to Sections 110 and 113 of the Act.
- 5. Pursuant to Section 111 of the Act, 42 U.S.C. § 7411, it is unlawful to operate a modified source in violation of applicable NSPS regulations.
- 6. Pursuant to 40 C.F.R. § 60.40a, the provisions of 40 C.F.R. Part 60, Subpart Da apply to electrical steam generating units greater than 250 million BTU/hr in size, which are modified after September 18, 1978.
- 7. Pursuant to Section 502(a) of the Act, 42 U.S.C. § 7661(a), it is unlawful to operate without or in violation of a permit issued pursuant to subchapter V of the Act, 42 U.S.C. § 7661 *et. seq.*
- 8. Kentucky's program under subchapter V of the Act was granted interim approval by the Administrator on November 14, 1995, (60 Fed. Reg. 57186) and final approval on October 31, 2001, (66 Fed. Reg. 54953). These regulations are currently codified at 401 KAR 51:020 and are federally enforceable under the Act. Pursuant to 401 KAR 52:020, Section (3)(1)(b), a source shall operate in compliance with a permit issued pursuant to that regulation.

9. Sections 4(1) and 5 of 401 KAR 52:020 require that a source submit a complete permit application which identifies all applicable requirements and information needed to determine applicable requirements for the source.
10. Section 5(8) of 401 KAR 52:020 requires that a permit application must contain a compliance plan for all applicable requirements for which the source is not in compliance.
11. Section 5(9) of 401 KAR 52:020 requires that a permit application must contain a certification of compliance with all applicable requirements.
12. Sections 21 and 23 of 401 KAR 52:020 require that a source submit compliance certifications annually.
13. Pursuant to 40 C.F.R. § 70.1(b), all subject sources shall have Title V permits which ensure compliance with all applicable requirements.

FINDINGS

14. The substantial work outlined in paragraph 1 of this NOV resulted in an increase in both the annual and hourly emissions of SO₂, NO_x, and PM. The work conducted on Unit 3 constitutes a major modification that subjects this unit to the PSD provisions of the Kentucky SIP. To date, E.ON U.S. has not complied with these regulations.
15. The substantial work outlined in paragraph 1 of this NOV resulted in an increase in the hourly emission rates of SO₂, NO_x, and PM. The work conducted on Unit 3 constitutes a modification that subjects this unit to the NSPS provisions at 40 C.F.R. Part 60, Subparts A and Da. To date, E.ON U.S. has not complied with these regulations.
16. The E.W. Brown plant does not have a Title V permit that ensures compliance with the applicable PSD and NSPS requirements for Unit 3, as required by 40 C.F.R. § 70.1(b).
17. E.ON U.S. failed to submit a complete permit application identifying applicable PSD and NSPS requirements and containing a compliance plan for Unit 3 at the E.W. Brown plant as required by KY SIP Sections 4(1) and 5 of 401 KAR 52:020 and Section 5(8) of 401 KAR 52:020 respectively.
18. The annual compliance certifications submitted by E.ON U.S. for the E.W. Brown facility failed to identify the applicability of PSD and NSPS for Unit 3 as required by Sections 21 and 23 of 401 KAR 52:020.

19. These violations of the Act and the Kentucky SIP have resulted in the releases of SO₂, NO_x, and PM into the environment in excess of regulatory requirements.

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, and/or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation on or before January 30, 1997, no more than \$27,500 per day for each violation between January 31, 1997, and March 14, 2004, and no more than \$32,500 per day for each violation on or after March 15, 2004. Sections 113(a)(1) and 113(b) also provide that the Administrator may take the same actions to enforce violations of subchapter V of the Act, 42 U.S.C. § 7661 *et. seq.*

Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements.

E.ON U.S. may, upon request, confer with EPA. The conference will enable E.ON U.S. to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. E.ON U.S. has the right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

Jennifer Lewis
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-9518

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

4/25/06
Date

G. Alan Farmer
G. Alan Farmer
Acting Director
Air, Pesticides, and Toxics
Management Division

